

REMARKS**Summary of the Office Action**

Claims 1-4 and 10-16 are rejected under 35 U.S.C. § 103(a) as being unpatentable over European Patent Application Publication No. 1 249 696 to Matsushita Electric Industrials Co., Ltd. (hereinafter “Matsushita”) in view of U.S. Patent No. 4,632,559 to Brunsting.

Claim 9 is rejected under 35 U.S.C. § 103(a) as being unpatentable over Matsushita in view of Brunsting, and further in view of U.S. Patent No. 4,676,653 to Strohmeier et al. (hereinafter “Strohmeier”).

Claims 5-8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Request to Clarify the Office Action

Clarification of the features allegedly taught or suggested by Brunsting is respectfully requested.

In describing the various features allegedly taught or suggested by Brunsting, the Office Action attributes to Brunsting reference number 32 a number of different features including an irradiation optical system, a first baffle portion, and a semiconductor light emitting element. However, it is not clear how Brunsting’s light source 32 is illustrative of each of the attributed features. Additional references in the Office Action that are also unclear include “beam shaping member (i.e., aperture of figure 2)” and “beam shaping member (figure 2).”

It is respectfully requested that any future office action that relies on Brunsting particularly identify the features that are being relied upon.

Summary of the Response to the Office Action

Claims 1, 5 and 11 are currently amended. Claims 1 and 11 have been amended with regard to matters of punctuation and grammar, and claim 5 has been rewritten in independent form.

Claims 2-4, 6-10 and 12-16 remain as originally filed.

Accordingly, claims 1-16 are respectfully submitted for reconsideration.

All Claims Define Allowable Subject Matter

The Examiner's indication that claims 5-8 recite allowable subject matter is greatly appreciated.

In accordance with the Examiner's helpful suggestion, claim 5 has been rewritten in independent form so as to additionally include all the features of original claim 1. Thus, independent claim 5 is respectfully submitted to be in condition for allowance.

Claims 6-8 depend from claim 5 and thus recite the same allowable combination of features, as well as reciting additional features that further distinguish over the applied prior art. Therefore, it is further respectfully submitted that claims 6-8 are also in condition for allowance.

The rejections under 35 U.S.C. § 103(a) of claims 1-4 and 9-16 are respectfully traversed in view of the following arguments.

Independent claim 1 recites a measuring device that includes, *inter alia*, "a semiconductor light emitting element," "a beam shaping member for shaping light from the semiconductor light emitting element," "a lens for focusing the beam from the beam shaping member on the immunochromatography test piece," a first baffle portion that is "disposed between the semiconductor light emitting element and the beam shaping member," a second baffle portion that is "disposed between the beam shaping member and the lens," and a third baffle portion that is "disposed between the lens and the immunochromatography test piece." Independent claim 12 recites a light source device that includes, *inter alia*, "a semiconductor light emitting element," "a beam shaping member for shaping light from the semiconductor light emitting element," "a lens for focusing the beam from the beam shaping member on the measuring object," a first baffle portion that is "disposed between the semiconductor light emitting element and the beam shaping member," a second baffle portion that is "disposed between the beam shaping member and the lens," and a third baffle portion that is "disposed between the lens and the measuring object." And independent claim 16 recites a measuring device that includes, *inter alia*, "a pedestal on which an immunochromatography test piece is placed," "a semiconductor light emitting element," "a beam shaping member for shaping light from the semiconductor light emitting element," "a lens for focusing the beam from the beam shaping member," a first baffle portion that is "disposed between the semiconductor light emitting element and the beam shaping member," a second baffle portion that is "disposed between the beam shaping member and the lens," and a third baffle portion that is "disposed

between the lens and the pedestal.” Support for these combinations of features may be found in Applicant’s specification at, for example, paragraphs 0054-0060.

It is respectfully submitted that Matsushita, Brunsting and Strohmeier, whether considered individually or in combination, fail to teach or suggest each and every feature recited in Applicant’s independent claims 1, 12 and 16.

The Office Action acknowledges that Matsushita fails to disclose a first baffle portion of tubular shape for removing stray light, which is disposed between the semiconductor light emitting element and the beam shaping member; a second baffle portion of tubular shape for removing stray light, which is disposed between the beam shaping member and the lens; and a third baffle portion of tubular shape for removing stray light, which is disposed between the lens and the immunochromatography test piece. To overcome the deficiencies of Matsushita, the Office Action alleges that Brunsting teaches first, second and third baffle portions of tubular shape. However, this allegation is respectfully traversed in view of the following comments.

Brunsting shows two different embodiments of an optical readhead: Figure 1 shows an optical readhead 10 with a 45 degree angle between an axis of illumination 13 and an axis of detection 17, and Figure 2 shows an optical readhead 30 with an axis of detection 35 that is coplanar with the axis of illumination, i.e., “[b]oth light source 32 and detector 36 are mounted on the same surface 38 in close proximity to each other” (Brunsting column 4, lines 36-38). Thus, according to Brunsting’s Figure 2 embodiment, the illumination light and the reflected light move in opposite directions along the same passage. *See also* Brunsting column 4, lines 44-49. Neither Brunsting’s embodiment of Figure 1, nor the embodiment of Figure 2, which is the only embodiment referenced in the Office Action, teach or suggest both a first baffle portion that is disposed between the semiconductor light emitting element and the beam shaping member, and a second baffle portion that is disposed between the beam shaping member and the lens. In particular, there is not a first baffle for removing stray light that is disposed between the light source 32 and a beam shaping member, as defined by the aperture at the entrance to Brunsting’s light transmission path 46. Even if a beam shaping member is defined at the intersection of Brunsting’s light transmission path 46 and lens 48, a proposition that Applicant does not accept, then there is not a second baffle for removing stray light that is disposed between the beam shaping member and the lens.

For at least any of the above reasons, Brunsting fails to teach or suggest a combination of features including first and second baffles, as alleged in the Office Action. Thus, Matsushita and Brunsting, whether considered individually or in combination fail to disclose each and every feature recited in Applicant's independent claims 1, 12 and 16, and it is respectfully submitted that the rejections under 35 U.S.C. § 103(a) of these claims should be withdrawn.

Claims 2-4, 10, 11 and 13-15 depend from one of independent claims 1 and 12, and therefore recite the same allowable combinations of features, as well as reciting additional features that further distinguish over Matsushita and Brunsting. Thus, it is respectfully submitted that the rejections under 35 U.S.C. § 103(a) of these claims should also be withdrawn

With regard to claim 9, which depends from independent claim 1, the Office Action alleges that Strohmeier teaches "a scanning mechanism (figures 1 and 3-4) effecting relative movement." However, it is respectfully submitted that Strohmeier is completely silent as to any such scanning mechanism, and in fact teaches against a scanning mechanism. Specifically, Strohmeier states that "test fields 13 and 15 are pressed against the measuring aperture 69 by a pressure device 75" (column 8, line 67, to column 9, line 5).

For at least any of the above reasons, Strohmeier fails to teach or suggest a combination including of a scanning mechanism, as alleged in the Office Action. Thus, Matsushita, Brunsting and Strohmeier, whether considered individually or in combination fail to disclose each and every feature recited in Applicant's claim 9, and it is respectfully submitted that the rejection under 35 U.S.C. § 103(a) of this claim should be withdrawn.

CONCLUSION

In view of the foregoing, Applicant submits that the pending claims are in condition for allowance, and respectfully requests reconsideration and timely allowance of the pending claims. Should the Examiner feel that there are any issues outstanding after consideration of this response, the Examiner is invited to contact Applicant's undersigned representative to expedite prosecution. A favorable action is awaited.

EXCEPT for issue fees payable under 37 C.F.R. § 1.18, the Commissioner is hereby authorized by this paper to charge any additional fees during the entire pendency of this application including fees due under 37 C.F.R. § 1.16 and 1.17 which may be required, including any required extension of time fees, or credit any overpayment to Deposit Account No. 50-0573. This paragraph is intended to be a **CONSTRUCTIVE PETITION FOR EXTENSION OF TIME** in accordance with 37 C.F.R. § 1.136(a)(3).

Respectfully submitted,

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